

CHAPTER III

LABOR STANDARDS

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CONSTRUCTION CHECKLIST

Date

Determine if project is covered by Davis-Bacon

Assign Labor Standards Coordinator

Obtain applicable Federal decisions

Review wage decisions, determine if additional wage
decisions are required

If additional classification is necessary, submit
Report of Additional Classification Rate

State HOME office

Ten days before bid opening determine if wage
Decisions are still current

Review bid package for completeness

Federal wage decision

State wage decision (if applicable)

Federal Labor Provisions

Standard Contract Language

Standard Solicitation for Bid Language

Construction Contracts over \$10,000

Standard Equal Opportunity Clause
for Construction over \$10,000

Standard Federal Equal Opportunity
Construction Contract Specifications

Suggested Minority/Women's Business Enterprise
Clauses to be Incorporated in Bid Documents

CONSTRUCTION CHECKLIST (Continued)

Determine that the minimum bonding requirements have been met for construction contracts in excess of \$100,000	_____
Bid guarantee	_____
Performance bond	_____
Payment bond	_____
Review by City/County Attorney	_____
Prepare minutes of bid opening	_____
Tabulate bids	_____
Make recommendation for award	_____
Verify construction Contractor/Subcontractor State eligibility with State Contractor's License Board	_____
Verify construction Contractor/Subcontractor Federal eligibility with State HOME Office	_____
Submit Construction Contractor's Notification of Subcontracts	_____
Award to U.S. Dept. of Labor for construction contracts in excess of \$10,000	_____
List of Federal and NonFederal Work in Covered Area	_____
Execute contract	_____
Submit a Notice of Contract Award/Preconstruction Conference/Start of Construction to State HOME Office within 10 working days of award of contract	_____

CONSTRUCTION CHECKLIST (Continued)

Hold Preconstruction Conference using minutes contained
Obtain all require signatures on
Preconstruction Conference minutes

Issue Notice to Proceed to Contractor

Conduct project compliance reviews:
Review weekly payrolls and statements
of compliance

After receipt of second payroll, contact
HOME representative to schedule monitoring
Of labor standards component

Determine that State and federal wage
decisions and the Notice to Employees
Poster are posted at the job site

Conduct employee interviews using
Record of Employee Interview Form (HUD-II)

If trainees or apprentices are being
used on the project, obtain proof of
registration in a bona fide program
and place in the labor standards file

Submit Semi-Annual Labor Standard Enforcement Report
by April 5 and October 5 until
the project is closed out

Submit Final Wage Compliance Report



Federal Labor Standards Provisions

U.S. Department of Housing And Urban Development

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (I) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's pay-roll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met.

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140).

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate).

HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management of Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract of any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner take such action as may be necessary to cause the suspension of any further payment advance or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor disburse such amounts withheld for and on account of the contractor or sub-contractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (I) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all the information required to be maintained under 29 CFR Part 5.5(a)(3)(I). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(I) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned without rebate either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed as specified in the applicable wage determination incorporated in the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4. (I) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In

addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rate (expressed in percentages of the journeyman's hourly rate specified in the registered program for the apprentice's level of progress expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1.3 and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee,

the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 4.12(a)(1) or to be awarded HUD contract or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code 18 U.S.C. 1001. Additionally, U.S. Criminal Code Section 1010, Title 18 U.S.C. "Federal Housing Administration transactions" provides in part "Whoever, for the purpose of... influencing in any way the action of such Administration...makes, utters or publishes any statement knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years or both."

(11). Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "Laborers" and "Mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54. 83 Stat 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontracts as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Request For Wage Determination And
Response To Request
(Davis Bacon Act as Amended and Related Statutes)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



FOR DEPARTMENT OF LABOR USE		Mail Your Request To: Labor Relations Staff Dept. of Housing & Community Dev. HOME Program P.O. Box 952054 Sacramento, CA 94252-2054		CHECK OR LIST CRAFTS NEEDED (Attach continuation sheet if needed)	
Response To Request		Requesting Officer (Typed name and signature)		<input type="checkbox"/> Asbestos workers	
<input type="checkbox"/> Use area determination issued for this area		Department, Agency, or Bureau		<input type="checkbox"/> Boilermakers	
		Phone Number		<input type="checkbox"/> Bricklayers	
		Date of Request	Estimated Advertising Date	<input type="checkbox"/> Carpenters	
				<input type="checkbox"/> Cement masons	
				<input type="checkbox"/> Electricians	
<input type="checkbox"/> The attached decision noted below is applicable to this project		Prior Decision Number (If any)	Estimated \$ Value of Contract	<input type="checkbox"/> Glaziers	
			<input type="checkbox"/> Under 1/2 Mil <input type="checkbox"/> 1 to 5 Mil	<input type="checkbox"/> Ironworkers	
			<input type="checkbox"/> 1/2 to 1 Mil <input type="checkbox"/> Over 5 Mil	<input type="checkbox"/> Laborers (Specify classes)	
Decision Number		Type of Work		<input type="checkbox"/> _____	
		<input type="checkbox"/> Bldg. <input type="checkbox"/> Highway		<input type="checkbox"/> _____	
Date of Decision		<input type="checkbox"/> Resid. <input type="checkbox"/> Heavy		<input type="checkbox"/> _____	
Expires		Address to which wage determination should be mailed. (Print or type)		<input type="checkbox"/> Lathers	
		<div style="border: 1px solid black; height: 150px; margin: 10px 0;"></div>		<input type="checkbox"/> Marble & tile setters, terrazzo workers	
Supersedes Decision Number				<input type="checkbox"/> Painters	
				<input type="checkbox"/> Piledrivers	
				<input type="checkbox"/> Plasterers	
Approved		Location of Project (City, County, State, Zip Code)		<input type="checkbox"/> Plumbers	
				<input type="checkbox"/> Roofers	
		Description of Work (Be specific) (Print or type)		<input type="checkbox"/> Sheet metal workers	
		<div style="border: 1px solid black; height: 150px; margin: 10px 0;"></div>		<input type="checkbox"/> Soft floor layers	
				<input type="checkbox"/> Steamfitters	
				<input type="checkbox"/> Welders—rate for craft	
				<input type="checkbox"/> Truck drivers	
				<input type="checkbox"/> Power equipment operators	
				(Specify types)	
				<input type="checkbox"/> _____	
				<input type="checkbox"/> _____	
				<input type="checkbox"/> _____	
				<input type="checkbox"/> _____	
		Other Crafts			
				<input type="checkbox"/> _____	
				<input type="checkbox"/> _____	
				<input type="checkbox"/> _____	
				<input type="checkbox"/> _____	

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF LABOR RELATIONS
Report of Additional Classification and Wage**

Rate to Wage Determination Number: _____

***Trade Classification:** _____

PROJECT NAME: _____

PROJECT NO: _____

Complete one of the following paragraphs A-D to document that the classification and wage rate are prevailing in the area for your type of construction.

- A.** As Prime Contractor I have surveyed the following contractors (in the area) and have found the classification of work at the following rates of pay and fringe benefits (where applicable):

Contractor/Location (city/state)	Base Rate	Fringe Benefits
_____	_____	_____
_____	_____	_____
_____	_____	_____

Proposed prevailing rate: _____ **plus fringe benefit of** _____

- B.** I am currently under a labor agreement and this classification has a base rate of _____ and fringe benefit of _____, according to our contract.

Copy of contract enclosed _____; copy of union contract has been provided your office _____.

- C.** I am not under a union agreement or the union agreement does not state the requested classification and rate proposed; however, the employee and/or his/her representative have agreed that this classification is prevailing and has the following prevailing base rate of _____ and fringe benefits of _____.

Employee _____ **or Representative** _____

Title _____

- D.** Attached are signed statements from the Secretary of the Trade Association representing contractors (e.g., AGC, ABC) and the Secretary of the Building Trades Council having jurisdiction (representing Labor), stating the classification is prevailing and the prevailing minimum wage rate.

(Signature of Prime Contractor)

(Signature of Director of Labor Relations)

DATE: _____

*Additional classifications needed for work not included within the scope of the classifications listed in the DOL wage determination may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)).

NOTE: Use of this form is optional.

No penalty will be imposed on
individuals who refrain from using it.

HUD-4230A (optional Form)
OMB No. 2501-0011

**NOTICE OF CONTRACT AWARD/PRECONSTRUCTION CONFERENCE/START
OF CONSTRUCTION**

TO: State HOME Program

FROM: City/County

SUBJECT: Notice of Contract Award/Preconstruction Conference/Start of Construction

This is to inform you that __(name of company:), I.D. number) at __(address)_____,
(phone number)_____, has been awarded a contract __(number) to __(brief description of work)
in the City/County of (city/county name). The number of the applicable State and federal wage
decisions are (number) , and (number) . The contract is for (amount). The estimated start of
construction is __(date) . Contract completion is estimated to be __(date) . A Preconstruction
Conference will be held concerning this project at (time) on __(date) at __(address) . The
City/County has designated __(name) as responsible for compliance with labor
standards and equal opportunity provisions.

PRECONSTRUCTION CONFERENCE MINUTES

PROJECT NAME: _____ DATE: _____

STATE HOME NUMBER: _____ TIME: _____

PROJECT LOCATION: _____ PLACE: _____

FEDERAL. WAGE DECISION NO: _____

STATE WAGE DECISION NO (IF APPLICABLE): _____

A preconstruction conference concerning labor standards provisions, administration and enforcement was conducted for the above project on this date. In addition to the attached, the following labor standards materials were provided to the construction contractor and were made available for others in attendance:

1. Applicable State and federal Wage Decisions (above).
2. Federal Labor Standards Provisions,
3. Poster WH-1321, Notice to Employees,
4. Payroll Form WH-347 (with instructions),
5. Certification of Understanding and Authorization,
6. Certification for Applicable Fringe Benefit Payments,
7. Standard Contract Language (all contracts and subcontracts),
8. Standard Solicitation for Bid Language (construction over \$10,000),

9. Standard Equal Opportunity Clause (construction over \$10,000),
10. Standard federal Equal Employment Opportunity Construction Contract Specifications (construction over \$10,000),

Each person at the conference was requested to register their name on an attendance sheet, a copy which is attached and made part of these minutes.

During the course of the conference, all of the labor standards and wage requirements which are applicable to the construction work to be performed were discussed in full. These standards and requirements are contained in the following publications: U. S. Department of Labor Regulations, Parts 1, 3 and 5; the HUD Handbook 1344.1, State and federal labor standards provisions; State HOME Contract Management Manual; and the attached material. Prior to adjournment, the participants were invited to ask questions so that there would be no misunderstanding of what is necessary in order for the construction contractor and any subcontractors to demonstrate compliance with the labor standards clauses above.

Special notations for this project or matters which could not be resolved at the conference are listed in the space below:

For additional information concerning labor standards and wage requirements, please contact the State HOME staff.

Date

Contractor Labor Standards Coordinator

Typed Name

Attachments

Semi-Annual Labor Standards Enforcement Report Summary Instructions

Introduction

The State of California HOME Program is subject to the Davis-Bacon and Related Act (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) labor standards. Twice a year the Program is required to collect the information contained in the **Semi-Annual Labor Standards Enforcement Report** from our contractors and submit it to HUD, who in turn submits it to the Administrator of the Wage and Hour Division within the Department of Labor (no later than April 30 and October 31 of each year).

Definitions and Guidance

Report periods run on a fiscal year basis. The first report for each year covers October 1 through March 30 (**your Report must be received by the HOME Program no later than April 5**); the second report covers April 1 through September 30 (**your Report must be received by the HOME Program no later than October 5**).

Part I - Contracting Activity – Questions 2 – 3 applies to contracts that were **awarded** during this period. Do not include contracts that were awarded prior to this period even though the contract may still be underway.

2. Enter total number of prime contracts subject to DBRA/CWHSSA awarded during this period. Track contracts by award date or start of construction - **do not** track by bid opening date.
3. A) Enter the total dollar amount of the contracts reported in #2; and

B) Under “2-3. List Project/Contract Names, Numbers and Amount (Summary Items 2 & 3)” list individual project/contract names, numbers, amounts, the wage decision and modification numbers in the contract and the wage decision effective date (bid opening date, contract award date or start of construction, as appropriate) relating to Items 2 & 3.

Part II - Enforcement Activity - Questions 4– 6 applies to all enforcement activity no matter when the contract was awarded or construction began.

4. A) Enter the number of **employers** (contractors, subcontractors, and lower-tier subcontractors) against whom complaints were received during the reporting period; and

B) Under “4. List employer against whom complaints were received (Summary Item 4)” list the names of the employers against whom complaints were received and the projects involved.
5. A) Enter the number of employers that were referred to HUD Labor Relations or DOL staff for compliance investigations, or for §5.11 and/or debarment hearing; and

B) Under “List cases referred to HUD or DOL for investigation or hearing (Summary Item 5)” list the employer, project, and agency to which the case was referred, and the reason for referral - investigation, §5.11 and/or debarment (§5.12) hearing.
6. Enter information relative to wage restitution that was **collected and/or disbursed**. This includes restitution disbursed by the agency; restitution reported on certified payroll correction reports, amounts collected but not disbursed because workers could not be found. Also list liquidated damages collected for Contract Work Hours and Safety Standards Act (CWHSSA) overtime violations.

SEMI-ANNUAL LABOR STANDARDS ENFORCEMENT REPORT SUMMARY**Pacific/Hawaii Region****Grantee: State of California HOME Program**

1. Period Covered From (Check One): ☐ October 1 through March 30 or ☐ April 1 through September 30
2. Number of prime contracts subject to the Davis-Bacon and Related Acts (DBRA) and/or the Contract Work Hours Safety Standards Act (CWHSSA) awarded this period:
2. _____
3. Total dollar amount of prime contracts reported in #2 above:
3. _____
4. Number of employers against whom complaints were received:
4. _____
5. Number of cases (employers) referred to HUD Labor Relation Staff (a); or Department of Labor (DOL) (b) for investigation or §5.11 hearing:
5.(a) HUD _____
5.(b) DOL _____
6. Number of workers for whom wage restitution was collected/disbursed (a) ; and total amount of wage restitution collected/disbursed (b) during this period; and total amount of liquidated damages collected (c) [include amounts disbursed by the client agency (e.g., HOME recipient), amounts reported on correction certified payrolls, amounts collected but not disbursed because the workers could not be found etc.]:
6 (a) Number _____
6 (b) Restitution amount _____
6 (c) Liquidated Damages collected _____

Comments:

SEMI-ANNUAL LABOR STANDARDS ENFORCEMENT REPORT SUPPLEMENT

Agency: State of California HOME Program

1. Period Covered From (Check One): ☐ October 1 through March 30 or ☐ April 1 through September 30

2-3. List Project/Contract Names, Numbers and Amounts (Summary Items 2 & 3):

<u>Project/Contract Name</u>	<u>HOME Contract #</u>	<u># of Contracts</u>	<u>Amount</u>
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4. List employers against whom complaints were received (Summary Item 4):

<u>Employer</u>	<u>Project (s)</u>
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5. List cases referred to HUD or DOL for investigation or hearing (Summary Item 5):

<u>Employer</u>	<u>Project</u>	<u>HUD or DOL</u>	<u>Invest. Or Hearing</u>
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Labor Standards Designee: _____
Please Print Name and Title

Address: _____

Telephone Number: _____

Signature: _____

Date: _____

Printed Name & Title : _____

(CITY/COUNTY LETTERHEAD)

Attn.: State HOME Program Representative

Subject: Final Wage Compliance Report Format

I. Coverage

HOME Contract No.: _____ Project Completion Date: _____

Project Name: _____

Project Location: _____
(Address) (City)

Prime Contractor: _____
(Name)

(Address) (City) (State)

Subcontractor: _____
(Name)

(Address) (City) (State)

II. Violations

1. Wage restitution in the total amount of \$_____ has been paid to employees by the above listed construction contractors.
2. Attach a list of names of employees, their employers and amount of restitution for each employee.
3. Method of restitution: _____ paid by construction contractor
_____ paid by City/County with funds withheld from payment to contractor

Were any wage underpayments willful? YES/NO
(If yes, see attached detailed report)

Were any liquidated damages assessed? YES/NO
(If yes, see attached detailed report)

Are administrative sanctions being considered? YES/NO
(If yes, see attached detailed report)

Wage underpayments were discovered through:

The type(s) of violations were:

Signed: _____ Title: _____ Date: _____

NOTE: Where underpayments by a construction contractor or subcontractor total \$1,000 or re, or where there is reason to believe that the violations are aggravated or willful (or, in the ~ of the Davis-Bacon Act, that the construction contractor has disregarded its obligations to employees and subcontractors), the Contractor shall furnish within 30 days after completion of investigation, this enforcement report to the Department.

Sample Attachment to Pre-construction Conference Minutes

LABOR STANDARDS PROVISIONS AND RELATED MATTERS

1. The term "wage decision" means the State and Federal wage determinations which are applicable and current at the start of construction.

The wage decision specifies the wage rates prevailing in the locality in which the work is to be performed, as determined by the Secretary of Labor, for classes of laborers and mechanics on construction of a similar nature, in accordance with the Davis-Bacon Act, as amended. The wage decision represents the minimum rates which must be paid to all laborers and mechanics employed or working on the site of the work.

The wage decisions which apply to this project are identified on the cover of these minutes. A copy of the wage decisions and the poster "Notice to Employees" (WH-1321) must be displayed at the job site in a prominent and protected area where it can be easily seen and reviewed by the workers.

2. Any class of laborers or mechanics which is not listed in the wage decision and which is to be employed on the project shall be classified or reclassified in conformance with the wage decision, and a report of the action taken shall be sent by HCD to the Secretary of Labor. No payrolls will be accepted which lists classifications that are not contained in the wage decision, or approved for the project by the additional classification process. Any request for additional classifications should be submitted in writing to HCD no later than 10 days from the date of the Pre-construction Conference. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the question, accompanied by the recommendation of HCD, shall be referred to the Secretary of Labor for final determination. Unclassified personnel may not work on the job until after this matter is resolved.

"Helper" classifications will not be approved by this office for additional classification, and may not be utilized for the project.

3. All mechanics and laborers employed in the construction of the project shall be paid unconditionally and not less often than once a week, the full amount of wages and bona fide fringe benefits due at the time of payment computed at rates not less than those contained in the wage decision. Contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to 29 CFR 5.5(a)(1)(4). Also, regular contributions or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, and which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

4. In all cases where fringe benefits are paid to the approved plans, funds or programs, the basic hourly rate of pay should be shown in Column 6, RATE OF PAY, of the payroll and, on reverse side of payroll, under REMARKS, show the amount of fringe benefits being paid to each individual program. Also, Section 4(a) on the reverse side of payroll should be In all cases where fringe benefits are paid in cash directly to the employee, show separately in Column 6, RATE OF PAY, of the payroll, the basic hourly wage rate paid to the employee and fringe benefits paid in cash to the employee; e.g., \$19.28/6.50. Section 4(b) on reverse of payroll should be checked.
5. Whenever the minimum wage rate prescribed in the wage decision for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor is obligated to pay the fringe benefit as stated in the wage decision, or an hourly cash equivalent (e.g., specific holidays and benefits expressed as a percentage of the basic hourly rate).
6. Apprentices and Trainees - The U. S. Department of Labor (DOL) regulations (29 CFR Part 5) contains language pertaining to the use of apprentices and trainees and establishes the parameters within which an employer may utilize a workman in a trade classification and is permitted to pay that workman a wage rate which is less than the rate required on the wage decision for that trade classification. These conditions are specified below, including the ratio of apprentices or trainees to journeymen that will be permitted on the job site.
 - a. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a state apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ration of apprentices to journeymen in any craft classification shall not be greater than the ration permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in the following paragraph, or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he or she actually performed. The grantee shall furnish to HCD written evidence of the required registration of the contractor's program and apprentices and trainees and those of subcontractors, the approved ratios of apprentices and trainees to journeymen, prior to the use of the apprentices on the job site.
 - b. Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must

be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on a payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish HCD written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

ATTENTION: You are advised that HCD will require strict adherence to the ratio approved under the registered program, and will require back wage adjustments (to the journeyman's rate) for any apprentice or trainee who is employed on the job site in excess of the approved ratio. This ratio must be observed **ON THE JOB SITE** irrespective of the employer's compliance with the ratio as to the entire work force. The ratio that will be applied is the ratio which is in force at the time of the effective date for the wage decision as defined above, in accordance with the DOL regulations.

Supervisory or management personnel who are at the job site and who are not performing construction work may be counted as journeymen for the purpose of demonstrating compliance with the apprenticeship/trainee ratio. These personnel must be listed on the payroll reports in order to be considered for this purpose.

7. The Copeland Act (Anti-Kickback Act) provides that no deduction or rebate on any account be taken from an employee's pay, except such deductions mandatory by law, unless this deduction is authorized in writing by the employee. A copy of the signed authorization must be submitted with the payroll on which the deduction appears. One signed authorization is sufficient for deductions made on a regular basis.
8. Overtime Compensation
 - a. The Fair Labor Standards Act requires compensation at the rate of one and one-half times the basic hourly rate of pay, for all hours worked in excess of 40 hours in any workweek.
 - b. Additionally, on those projects subject to the provisions of the Contract Work Hours and Safety Standards Act, no contractor or subcontractor shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such workweek. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages

as well as to the United States for liquidated damages. Liquidated damages will be computed at the rate of \$10 per day, per violation.

9. The following definitions are contained in the DOL regulations and shall be observed for the purpose of labor standards administration and enforcement throughout the course of this work.
 - a. The term "construction" means all types of work done on a particular building or work at the site. This includes, and is not limited to, altering, remodeling, painting and decorating; the transporting of materials and supplies to or from the building or work; the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work; and any cleaning and preparation which is performed pursuant to the construction contract and is prerequisite to the final acceptance of the completed work.
 - b. The terms "laborer" and "mechanic" includes at least those workers whose duties are manual or physical in nature (including those who use tools or who are performing the work of a trade), as distinguished from mental or managerial.
 - c. Every person performing the duties of a laborer or mechanic in the construction of the project is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person. Furthermore, every person paid by a contractor or subcontractor in any manner for this labor in construction of the project is "employed" and receiving "wages" regardless of any contractual relationship alleged to exist between him and the real employer.
 - d. The term "wages" means the basic hourly rate of pay, any contribution made pursuant to, or costs anticipated to provide, a bona fide fringe benefit plan, fund or program.
 - e. The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under the regulations. No other methods of payment shall be recognized.

10. Subcontractors

The contractor, his or her subcontractors and any lower-tier subcontractors shall insert Federal Labor Standards Provisions and State Labor Standards Provisions in any subcontracts into which they may enter. The contractor shall not thereby be relieved of responsibility for the compliance of any subcontractor with these conditions.

11. Contractor/Subcontractor Certifications

- a. The contractor and each subcontractor is required to submit with, or prior to, their first payroll, the following certifications (a copy of each is attached):

1. Certification of Understanding and Authorization which certifies that the proper officials have read and understand the minutes of the Pre-construction Conference on Labor Standards Provisions and Related Matters; and identifies the person(s) who is authorized to sign the weekly certified payroll reports.
 2. Certification for Applicable Fringe Benefit Payments which identifies the method by which the contractor/subcontractor will meet any obligation for fringe benefits which may be contained in the wage decision, and any plans, funds, or programs to which such payments will be made.
- b. Internal Revenue Service Employer Identification Number. This assigned number must be furnished by each subcontractor on their first payroll report.

12. Weekly Certified Payroll Reports and Related Records

- a. Payroll forms are available for purchase from the U.S. Government Printing Office Bookstore, or from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, in pads of 100, including one instruction sheet. Contractors may reproduce the payroll form to create an ample supply.
- b. The weekly certified payroll reports and basic records relating thereto (e.g., timecards, canceled payroll checks) shall be maintained during the course of the work and preserved for a period of three years thereafter for all labor which is performed in the construction of the project.

The contractor and all subcontractors shall make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of HCD, HUD and the Department of Labor, and shall permit such representatives to interview employees during work hours on the job site. The subcontractors shall also make such records available to, and permit interviews by, authorized representatives of the contractor.

- c. The original copy of all payroll reports, including those of all subcontractors, shall be submitted weekly to the grantee by the prime contractor. The copy of each payroll shall be accompanied by a "Weekly Statement of Compliance," which is either the reverse of the Payroll Form WH-347 or the "Statement of Compliance". The Statement of Compliance shall be executed with an original signature by the employer (owner, partner, corporate officer) or designated payroll officer for whom we have received authorization. The grantee will not accept any payrolls that have been endorsed with a signature stamp.
- d. Each contractor's payrolls shall be numbered consecutively, beginning with #1. The first payroll shall contain the name, address, and social security number of each employee. The last payroll for each contractor for this project shall be clearly marked "FINAL."

- e. Each payroll shall contain for each employee: the correct work classification (in accordance with the wage decision); the actual daily and weekly hours worked on this project; the hourly rate of pay; the gross wages earned; the deductions made; and the net wages paid. If additional wages were earned for work at another project, the employer may include such additional wages under Column 7 of the payroll as follows: \$350.00/\$600.00 (wages for this project /total for all projects). For these cases, the deductions and the net wages may be computed based upon the total weekly earnings.
13. Working Subcontractors - A bona fide subcontractor, with an established business, and who performs work on the job site with their crew, must list on the payroll all personnel engaged in the contract work. As the owner of the firm, for themselves, they need list only their name, work classification/owner, their hours worked each day, and total hours for the week on the payroll.
- NOTE: This is an administrative policy and does not imply that owners are not "mechanics" or "laborers," or that owners are not entitled to the "wages" prescribed by the wage decision for the type of work performed. This policy merely recognizes the right and responsibility of an owner to operate their business in such a way as to assure that their wages can be met from the proceeds of the business. The policy permits the labor relations staff to accept, without further verifications, the owner's certification on the Statement of Compliance that their own wages are sufficient to meet the requirements of the wage decision.
14. A laborer or mechanic who performs work on the project in more than one classification within the same workweek shall be classified and paid at the highest wage rate applicable to any of the work which he performs unless the following requirements are met:
- a. Accurate daily time records shall be maintained. These records must show the time worked in each classification and the rate of pay for each classification, and must be signed by the employee.
 - b. The payroll shall show the hours worked in each classification and the wage rate paid for each classification.
 - c. The payroll shall be signed by the employee, or a copy of the signed daily time record shall be attached to the payroll.
15. To minimize the possibility of misunderstanding in regard to the receipt of payrolls, the following conditions are effective immediately for the submission of the weekly certified payroll reports:
- a. The general contractor is responsible for the careful review and verification of his own and all subcontractors' payrolls before forwarding same to the grantee and for the timeliness of all payroll submissions.

- b. Payroll submissions must be kept up-to-date. The payrolls for any given week must be submitted not later than 14 days following the close of the corresponding pay week.
 - c. Each submission, whether hand-carried or mailed, must be accompanied by an itemized cover letter. The entire submission will be returned if it is found to be incomplete, i.e., items that are not present that are listed on the cover letter.
 - d. In the event that a submission is returned as incomplete, or that any contractor/subcontractor is found to be delinquent in submitting payrolls, the general contractor will be considered to be in non-compliance, and any advances may be withheld.
16. During the course of the work, the grantee's labor standards coordinator will perform periodic audits of the payrolls and related submissions. The prime contractor will be notified in writing of any discrepancies or violations that are disclosed in the audit, and of the actions that will be necessary to resolve the discrepancies and/or violations. The prime contractor shall be held entirely responsible for the prompt resolution of all non-compliances, including those pertaining to all subcontractors and any lower-tier subcontractors.
17. At the time that construction is completed for this project, a final audit of the payrolls and related submissions will be performed. The project will not be approved by the grantee to proceed to final endorsement until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due, including related liquidated damages.

HOME Final Rule 24 CFR Part 92

Sec. 92.354 Labor.

(a) General.

(1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs in Sec. 92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

(b) Volunteers. The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(c) Sweat equity. The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

Date: August 21, 1996

Letter No. LR-96-02

Subject: **Application of Federal labor standards to HOME projects**

I. Statutory and regulatory provisions.

II. Determining applicability.

III. Scope of coverage.

IV. Homeownership projects.

V. Case studies.

The National Affordable Housing Act of 1990 (NAHA) created the HOME Investment Partnerships Program (HOME), a housing development program with new language in the provision concerning Federal (Davis-Bacon) labor standards applicability. Guidance for HUD field staff and clients on the application of Davis-Bacon requirements to HOME projects was provided on a case-by-case basis until general policy decisions could be made and those policies could be tested against actual project proposals. We believe that sufficient experience has been gained to enable us to compile general guidance in this area for HUD staff and client use.

The following is provided with the cooperation and advice of the Community Planning and Development's Office of Affordable Housing and the Office of General Counsel.

I. Statutory and regulatory provisions.

Federal (Davis-Bacon) wage requirements are made applicable to the HOME program by ***Section 286 of the NAHA*** which provides, in part, as follows:

"Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act..., shall be paid to all laborers and mechanics employed in the development of affordable housing involved,...."

HUD regulations (***24 CFR 92.354***) paraphrase the statutory provision and clarify that the contract for construction must contain these wage provisions if HOME funds are used for any project costs, including construction or nonconstruction costs, for housing with 12 or more HOME-assisted units.

The regulations further explain that a construction contract that includes a total of 12 or more HOME-assisted units is covered by Davis-Bacon requirements even if the contract covers more than one HOME "project" and prohibits arranging multiple construction contracts within a single project for the purpose of avoiding Davis-Bacon coverage. Once triggered, the wage provisions apply to the construction of the entire project - HOME-assisted and non-assisted portions, alike.

The NAHA and program regulations also provide for the exclusion of certain **sweat equity** labor from Davis-Bacon coverage. Members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or toward rental payments are not subject to Davis-Bacon wage requirements. Additionally, **volunteers** may be employed in accordance with *24 CFR Part 70*.

The HOME labor standards provision is unlike labor standards clauses in other HUD programs. For example, the labor standards for Community Development Block Grants (CDBG) apply to *construction work financed in whole or in part* with the assistance received through CDBG and cover residential property only if the *property contains not less than 8 units*. For HOME, we are directed to "**construction contracts**" (not construction work or properties) where the standard is whether 12 or more of "units" covered by the contract are "**assisted**" (not whether construction work is directly financed). These differences serve both to focus the unit threshold window on the "contract" and to broaden the scope of coverage to construction and non-construction costs and assisted and non-assisted portions.

II. Unit Threshold.

The Davis-Bacon "trigger" relates to the *number of HOME-assisted units contained in a construction contract*. It is important to recognize that the two (2) factors are: 1) the number of HOME units - there may be units which **are not** HOME-assisted in the contract; and 2) the scope of the construction contract - **not** the "project."

The number of HOME-assisted units is determined in accordance with guidance provided by the program office in *Notice CPD 94-12* (April 26, 1994). This determination is made by the participating jurisdiction (PJ), insular area or Indian tribe (referred to collectively as *recipients*) primarily for purposes other than labor standards applicability. The Offices of Labor Relations, General Counsel and CPD have agreed that the number of HOME-assisted units identified pursuant to this Notice is acceptable for Davis-Bacon unit threshold purposes. The number of assisted units within a specific project should be available from the recipient and is also reflected on HUD Form 40094, Homeownership Assistance/Rental Housing Project Set-Up Report. (*Note that the recipient determines the number of assisted units in a **project**, not a construction contract.*)

Once the number of HOME-assisted units is determined, the construction contract(s) must be identified. Each contract must then be considered for coverage based upon the number of HOME units contained in the contract: contracts with 12 or more HOME units are covered; contracts with 11 or less HOME units are not. Two important factors must be weighed in this determination:

- 1) **A HOME project can not be divided into multiple contracts to avoid Davis-Bacon coverage.** There may be other, legitimate reasons that a single project would be constructed with separate contracts that would each contain 11 or less HOME units and the contracts would not be covered. But it is not permissible to arrange multiple contracts solely to circumvent labor standards requirements.
- 2) **A construction contract with 12 or more HOME-assisted units is covered even if the contract involves more than one HOME project.** For example, if, for whatever reason, four projects each containing 4 HOME-assisted units are "pooled" into one construction contract, the contract would be covered.

Special note on Group Home and Single Room Occupancy (SRO) projects:

Notice CPD 94-01 (January 4, 1994) defines group homes and SROs for HOME assistance purposes. A **group home** is usually a large single family residence consisting of common space such as kitchens, dining areas, living rooms and bathrooms, along with separate private or semi-private space (i.e., bedroom) for each occupant. An **SRO** consists of single room dwelling units that are the primary residences of its occupants, and may have shared common dining, sanitary and/or recreation facilities. Depending upon certain parameters established by the program office (*See Notice CPD 94-01*), PJs may choose to consider group homes as a single unit for HOME assistance purposes or may classify them as single room occupancy units. In the latter case, if the number of HOME-assisted SRO dwelling units covered by a contract for construction equals 12 or more, Davis-Bacon labor standards are applicable.

III. Scope of coverage.

It has been determined that applicability of Federal wage requirements is not affected by the specific use of HOME funding. That is, it does not matter whether HOME funds are used for construction or non-construction project costs; if the threshold is met then the labor standards provision is triggered. (*See also CPD Notice 92-19, dated June 9, 1992.*) This determination hinges in part on the difference between "assisted" and "financed" - "assisted" is a much broader term. In addition, under the statute Federal wage rates apply whenever a construction contract contains 12 or more *units* that are assisted, whether the *contract* is assisted or not. Housing units in a HOME project that are constructed with private funds may still be "assisted" by HOME even though the construction of the units is not directly "financed" by HOME.

It has also been determined that once triggered, the labor standards apply to the construction of the entire project. For example, if it were practical to funnel all of the HOME funds to the construction costs for a portion of a project it would not limit labor standards applicability to that HOME-funded portion. (*See also CPD Notice 94-12.*)

IV. Homeownership projects.

Some HOME projects are designed to provide homeownership opportunities to low-income families. These projects may not involve the use of HOME funds for the construction of the housing in any way but, for example, involve only down payment or mortgage assistance to the homebuyers.

Construction work for projects in which HOME funds are used only to assist homebuyers to acquire single family housing is not covered UNLESS there is an agreement with the owner or developer of the housing in advance of the construction work that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more HOME-assisted units.

V. Case Studies

Many of the following examples are based on actual projects that were presented for labor standards coverage determinations. A description of the project is followed by the coverage decision and rationale. Remember that in most cases the key to applicability is not the use or targeting of the HOME funds but the number of HOME-assisted units that are in a contract for construction.

- 1) a. Proposal The project involves the construction of a 59-unit single family residence subdivision. HOME funds will provide project construction financing and secondary permanent financing to prospective low-income homebuyers. The PJ, as the lender and with concern about the overall viability of the project, is willing to commit to the development of the subdivision only in phases of 10 or 11 units at a time. Funding for subsequent phases will be contingent on the successful

completion and marketing of the preceding phase(s). Separate construction contracts will be awarded for each phase.

b. Decision The proposed construction work will not be covered. None of the contracts for construction will contain 12 or more HOME-assisted units and it appears that the division of the project into multiple contracts is a precautionary measure to protect the lender and is not for the purpose of avoiding Davis-Bacon coverage.

2. a. Proposal The project involves the construction of a 60-unit multifamily property (all 60 units will be HOME-assisted) and a 100-unit single family development (of the 100 single family units, 33 units will be HOME-assisted). The construction work will be accomplished in four separate contracts: one for the 60-unit multifamily property; and 3 contracts for the single family homes each contract containing no more than 11 HOME-assisted units. HOME funds will be used for land acquisition and site development for the construction of all of the housing units. The developer and PJ have entered into an agreement in advance of construction that HOME assistance will be provided for homebuyers to purchase 33 of the single family units. The PJ and developer assume that the multifamily building will be covered but ask for confirmation that structuring the single family portion in the manner described will avoid Davis-Bacon coverage.

b. Decision The construction of the entire development is covered. The assumption that the multifamily building is covered is correct. As to the single family units, there is no reasoning presented that explains why this portion has been divided into 3 separate contracts other than to avoid prevailing wage requirements. In fact, the inquiry so much as states that avoiding Davis-Bacon is the reason for the multiple contract strategy.

Special notes on this Case Study: This scenario, modified only slightly, could result in a very different coverage decision relative to the single family units: What if the PJ established the single family units as three separate *projects* each containing 11 HOME-assisted units and the developer awarded a separate construction contract for each project?

While the regulations prohibit creating multiple contracts within a single project to avoid Davis-Bacon coverage, *there is no prohibition against arranging multiple **projects*** within a development proposal. In other words, the regulations would not prohibit a PJ - which considers a developer's proposal to build a 100-unit single family HOME project - from establishing multiple "projects" (each with 11 or less HOME-assisted units) and the developer awarding a separate construction contract for each project. This arrangement would result in no Davis-Bacon coverage. **However**, if the developer grouped these "projects" under one construction contract so that the total number of HOME-assisted units contained in the contract is 12 or more, the work would be covered. The key is the number of HOME-assisted units contained in a contract for construction.

3. a. Proposal A developer, with a commitment from the PJ for HOME assistance, proposes to develop 40 single family units for homeownership. HOME funds combined with private funds will be used for site acquisition and to finance the construction of the units, which will be performed under one contract. Prospective homebuyers will execute real property sales contracts, presumably conveying ownership of the land, prior to the construction of the single family units. Each unit will be entered as a single project in the HUD cash management system (CM/I). The PJ asks for confirmation that executing sales contracts prior to construction and entering the units as separate "projects" in the CM/I database would not trigger Davis-Bacon requirements.

b. Decision The construction work will be covered. The two factors presented, ownership of the land and separate entry into the CM/I database, have no significant bearing on labor standards

applicability. Davis-Bacon coverage will be triggered because the construction contract will contain 12 or more (40) HOME-assisted units.

4. a. Proposal A PJ requests guidance in relation to six (6) HOME projects totalling 22 units which will be owned and operated by one community based non-profit organization. All 6 projects, ranging from 2 to 4 units each, are in varying stages of processing and are being handled independent of each other with separate applications, loans and construction contracts. However, due to an approaching financing commitment deadline, all six projects were entered into the CM/I system on the same date.

b. Decision Davis-Bacon wage requirements would not apply to these projects. None of the contracts for construction will contain 12 or more HOME units. The date of entry into the CM/I system has no bearing on Davis-Bacon applicability.

5. a. Proposal The project involves the construction of 15 units in two buildings (9 units in one building; 6 in the other) on contiguous lots. A combination of HOME funds, low-income tax credits and developer equity are financing the project. Construction of both buildings was begun under one contract using Davis-Bacon wage rates. Disputes between the owner/developer and the contractor led to work stoppage and ultimately the contractor was dismissed. With both buildings only partially completed, the tax credit contributions were in jeopardy unless completed and occupied units were delivered quickly. In order to secure the tax credits, the PJ and developer propose to contract for completion of one building and then contract for the completion of the second building. The same contractor would be used for both buildings but the contract for the second building would be executed only after successful completion of the first.

b. Decision Davis-Bacon wage requirements would not apply to the construction of these buildings. Neither of the contracts for construction will contain 12 or more HOME-assisted units and it appears that the division of the project into multiple contracts is intended to expedite progress for tax credit benefits and not to avoid Davis-Bacon coverage.

6. a. Proposal A developer proposes to construct a multifamily project with 2 buildings of 8 HOME-assisted units each. HOME funds will be used for site acquisition and certain "soft costs" such as site surveys and architectural drawings. The construction work will be performed under one contract. No HOME funds will be used for the construction of the units.

b. Decision The construction of the project is covered. Unlike the CDBG program, the HOME labor standards provision is triggered whether HOME funds are used for construction or non-construction project costs. Since the construction contract will contain 12 or more HOME-assisted units, Davis-Bacon rates will apply.

7. a. Proposal The project involves the new construction of a 14-unit HOME (single family homeowner) subdivision. CDBG and HOME funds will finance site improvements for the subdivision. The improvements will be performed under one contract and constructed only within the boundaries of the subdivision site. The improved site/housing lots will be turned over to three (3) community housing development organizations (CHODOs). The CHODOs will contract for the construction of the individual housing units separately and will have no more than two lots in their control at any time. The remaining lots will be made available to the CHODOs as construction of the units is completed.

b. Decision The site improvements contract will be covered and the contracts for the housing construction will not. The question here is not so much coverage but what kind of wage decision is applicable. For Davis-Bacon purposes we can view the site improvements and housing construction

Allocating costs and identifying HOME-assisted units in multi-unit projects

 Directive Number: **98-2**

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
All CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions

Notice: CPD 98-2

Issued: March 18, 1998
Expires: March 18, 1999

Cross Reference: 24 CFR Part 92
Supersedes: 94-12

SUBJECT: Allocating costs and identifying HOME-assisted units in multi-unit projects.

I. PURPOSE

This Notice provides guidance to participating jurisdictions (PJs) who will use HOME funds, in combination with other funds, to develop multi-unit rental and homeownership projects. Specifically, it provides guidance to HOME PJs on how to determine the minimum number of HOME-assisted units in such projects and how to allocate costs to the HOME Program for these types of development. This Notice also describes a PJ's option to designate and track HOME units through a system of "fixed" HOME rental units or "floating" HOME rental units.

II. BACKGROUND

The HOME Program distinguishes between those units in a project that have been assisted with HOME funds and those that have not. This distinction differs from the Community Development Block Grant, the Rental Rehabilitation Program and other programs of the Department with which PJs may be familiar, in which entire buildings (and every unit therein) are considered "assisted" when one dollar of Federal funds is invested in the building. HOME funds may only be expended for units that are or will be occupied by families at or below 80% of median income and that meet the HOME affordability requirements. However, HOME funds may be invested in a mixed-income project to assist only a portion of the units in a project. Consequently, it is necessary to distinguish between HOME-assisted and other units.

This Notice outlines the method that PJs must use to determine the minimum number of units that must be designated HOME-assisted. In general, this designation will be based on the actual HOME investment in a unit or project. A PJ may choose to require a greater number of units to be designated as HOME-assisted, to maximize the number of affordable units in the jurisdiction over time.

III. FIXED AND FLOATING HOME DESIGNATIONS FOR RENTAL UNITS

PJs may, on a project by project basis, choose to use either a "**fixed**" or "**floating**" HOME-assisted designation for rental units.

A fixed designation means that the PJ determines from the outset which units are "HOME-assisted" units. For instance, in a 10-unit rental project, if the PJ designates units A, B, C, D and E as the HOME-assisted units, these specific units (A through E) remain the HOME-assisted units throughout the period of affordability.

A "floating" designation provides PJs the flexibility to maintain a certain number of HOME-assisted units throughout the affordability period, although the specific unit(s) so designated may vary with availability. In the previous example, the PJ would designate five units as "HOME-assisted" units, and at any given point in time throughout the period of affordability, five units

 CGHP: Distribution: W-3-1

must have the HOME-assisted designation, and be occupied by HOME income-eligible tenants. The substituted units must be at least comparable in terms of size, features and number of bedrooms to the originally designated units. A system of floating units is desirable when PJs want to ensure that assisted units are indistinguishable from and interchangeable with market-rate units. In addition, the system of floating units provides consistency with the system required in projects developed with Low Income Housing Tax Credits.

HOME Rental Project Rules. Each HOME rental project is subject to rent and occupancy requirements:

Low HOME rent units. Twenty percent of the HOME-assisted units in each rental project containing five or more HOME-assisted units must be occupied by very low-income families (i.e., families with incomes that do not exceed 50% of the area median income). These units must bear rents no greater than: (1) 30% of the tenant's monthly adjusted income; (2) 30% of the gross income of a family at 50% of area median income, adjusted for family size; (3) in units receiving Federal or State project-based rental assistance in which the very low-income family pays not more than 30% of the family's adjusted income, the maximum rent allowable under the Federal or State project-based rental assistance subsidy program.

High HOME rent units. The remaining HOME-assisted units in each project may be occupied by families with incomes up to 80% of the area median¹ and must bear rents no greater than the lesser of: (1) the Section 8 Fair Market Rents (FMRS) (or area-wide exception rents for existing housing) minus tenant-paid utilities; or (2) rents that are 30% of adjusted income for families at 65% of median income minus tenant-paid utilities.

Temporary noncompliance with the project income targeting requirements is permissible when the non-compliance is caused by an increase in a tenant's income. When the income of a tenant increases above 80% of area median income and the project has "fixed" HOME-assisted units, then the next available HOME-assisted unit must be rented to a HOME income-eligible tenant. When the project has "floating" HOME-assisted designations, the next comparable unit that becomes available in the project must be rented to a HOME income-eligible tenant. (That unit then becomes the HOME-assisted unit, and the rents must be structured accordingly.) When the income of a tenant in a HOME-assisted unit rises above 80% of area median, that tenant is required to pay 30% of his or her income for rent except that, in projects where HOME units float, the tenant's rent may not exceed the market rent for comparable, unassisted units in the neighborhood.

If the income of a tenant in a low HOME rent unit increases (but does not exceed 80% of area median income), then the PJ must rent the next available comparable unit (for "floating" unit projects) or HOME-assisted unit (for "fixed" unit projects) to a very low-income tenant. The unit occupied by the tenant whose income increased becomes a high HOME rent unit and the corresponding rent must be charged.

IV. ALLOCATING COSTS TO HOME-ASSISTED UNITS

HOME may only pay actual costs of HOME-assisted housing. If the units in a project are comparable (in terms of size, features and number of bedrooms), then the actual costs can be determined by pro-rating total (HOME-eligible) development costs. HOME funds could pay the pro-rated share of the HOME-assisted units. When units are not comparable, the PJ must allocate the HOME costs on a unit-by-unit basis, charging only actual costs to the HOME Program, as described below. Because units in rental projects with the "floating" HOME designation must be comparable, a PJ should always pro-rate costs in these projects. When units are generally comparable but vary slightly in size or amenities, a combination of the two approaches may be used.

A. Basic Considerations

Comparability

Unit Size. Comparability in size is defined by the bedroom count and square footage of individual units. Not all units with the same number of bedrooms are comparable in size. If there is a substantial difference in the square footage of two units with the same number of bedrooms, the units are not considered comparable.

Amenities. Comparability in amenities means similar fixtures, appliances and other features. In many mixed-income projects, to demand varying rents, the quality and types of amenities may vary among units. For instance, a project manager can demand a higher rent for a unit with wall-to-wall carpeting, garbage disposal, dishwasher and finer fixtures than for a unit without these amenities. This type of project does not typically have comparability of units, unless there is an equal distribution of assisted and non-assisted units that have these amenities.

¹/ Because 90% of the occupants of HOME-assisted rental units and households assisted with HOME tenant-based rental assistance must have incomes that are no greater than 60% of the area median income, most of these units, as a practical matter, must initially be rented to families with incomes at or below 60% of area median income.

Maximum per unit subsidy

The average per-unit HOME investment (whether it is derived on a unit-by-unit cost allocation basis, or as a pro-rated share of the total costs) may not exceed the HOME maximum per unit subsidy.² When a PJ is pro-rating costs, the total HOME investment (including acquisition, development hard costs to construct or rehabilitate, project soft costs and all relocation costs) divided by the number of HOME-assisted units yields the per unit HOME investment, which cannot exceed the HOME maximum per unit subsidy. When it is allocating actual costs on a unit-by-unit basis, the actual per unit cost may not exceed the HOME maximum per unit subsidy.

Common Costs

Common costs are costs incurred for acquisition of improved or unimproved real property that benefits all residents of units in a project, rehabilitation or construction of shared systems (heating, plumbing, roofing) or shared facilities (community rooms, laundry facilities located in residential buildings); and on-site improvements. Costs associated with a project's on-site management office or the apartment of an resident manager may be counted as common costs. The manner in which the costs for common elements of a project may be charged is dictated by the method chosen for allocating costs.

B. Option 1: Pro-rating Cost Allocation Method

To use the pro-rating method of allocating costs, there must be comparability between the total inventory of HOME-assisted and non-assisted units in a project. For example, in a 12 unit building in which half the units are one-bedroom and half are two-bedroom and the units of each bedroom size are approximately the same square footage, there should be an equal proportion of one- and two bedroom units in the assisted and nonassisted units. Similarly, if one-third of the units are HOME-assisted, designation of two 1-bedroom units and two 2-bedroom units would be required to achieve comparability in the distribution of units.

When assisted and non-assisted units are comparable, total eligible development costs (including acquisition, development hard costs to construct or rehabilitate the unit, and project soft costs excluding relocation costs) may be pro-rated in order to determine the HOME share of the total costs. Thus, all eligible project costs may be distributed between the HOME Program and other funding sources, provided that the HOME share does not exceed the maximum per unit subsidy limit. However, each eligible cost need not be paid as a proportionate share of each funding source. This means HOME can pay any eligible cost and the PJ can pro-rate the HOME share, in relation to the total eligible costs to determine the minimum number of HOME-assisted units. For example, if a PJ acquires land with \$100,000 in HOME funds, and uses \$900,000 in private funds to construct a multi-family rental property on the site, then a minimum of 1/10 (\$100,000/\$1,000,000) of the units in the project must be designated HOME-assisted. When the assisted and nonassisted units are comparable in size and distribution, a prorated share of the cost of common elements attributable to the HOME-assisted units may be paid with HOME funds. For example, a PJ replaces a heating system, installs new water and waste lines and replaces the roof in a 24-unit building with 8 HOME-assisted units that are comparable to the non-assisted units in the building. The PJ may pay one-third of the total common costs because one-third of the units are HOME-assisted.

The ratio of the HOME investment to the total eligible development costs is equivalent to the ratio of the minimum number of units that must be HOME-assisted to the total number of units. Because all relocation payments and other relocation assistance that the PJ wishes to treat as project costs may be paid in full by the HOME Program, these costs are subtracted from both the HOME investment amount and the total eligible development costs for the purposes of pro-ratio and then added back into the amount of the HOME investment.³ This principle can be expressed in this way:

HOME-Assisted Units: Total Number of Units

equals

HOME Investment (excluding relocation): Total Development Costs (excluding relocation)

² This limit is equal to the per-unit dollar limit established by HUD for elevator-type projects involving nonprofit mortgagors under section 221(d)(3) of the National Housing Act that apply to the area where the project is located.

³ Relocation costs associated with tenants residing in non-HOME units are HOME-eligible costs. These costs are divided among the HOME-assisted units and added to the per-unit HOME subsidy amount. Thus, the amount of relocation assistance that can be provided with HOME funds is constrained by the maximum per-unit subsidy limits.

For example:

A PJ develops a project with 20 comparable 2-bedroom units, and wants to designate half of the units HOME-assisted. The total eligible development cost (including relocation project costs) is \$500,000. Several tenants residing in the building will require relocation assistance at a total cost of \$40,000. No other relocation costs will be incurred.

What is the maximum amount the PJ may charge to the HOME Program? The total eligible development cost minus relocation is \$460,000. Since half the units are HOME-assisted, half of this amount (\$230,000) may be charged to HOME. All the relocation costs (\$40,000) may then be added to this. In total, HOME may pay as much as \$270,000, provided the per unit subsidy does not exceed the HOME maximum per unit subsidy for this PJ.

In this instance, how much is the per unit subsidy?

The total HOME investment (including relocation costs) divided by the number of HOME-assisted units yields the per unit HOME investment. (In this instance, \$27,000 per unit.)

A PJ wants to acquire and rehabilitate a 60-unit vacant building. The units will be comparable in terms of bedroom size, square footage, unit distribution and amenities. The total acquisition and development costs are \$1,000,000. The PJ will use \$200,000 of HOME funds toward rehabilitation.

What is the minimum number of units that the PJ must designate as HOME-assisted?

Because the proportion of total acquisition and development costs to HOME funds is 5:1 (\$1,000,000 : \$200,000), the proportion of total units to HOME-assisted units must also be at least 5:1. This means there is at least one HOME-assisted unit for every 5 units in the building, or one-fifth. For a 60-unit building, there are 12 HOME-assisted units (one fifth of 60 is 12).

If the PJ is developing an occupied project in which some of the units are occupied by over-income tenants, it may not invest HOME funds in those units.⁴ If the units are comparable, the PJ can ascertain the maximum amount of its HOME investment in this project by determining the ratio of units that are occupied by income-eligible tenants. That same ratio of the costs may be charged to HOME. For example:

A PJ wishes to acquire a building with 20 comparable units, 10 of which are currently occupied. The PJ certified the incomes of each of these occupied units and found the following:

- 5 units have tenants whose incomes are above 80% of the area median income,
- 1 unit is occupied by a tenant whose income is at 74% of the area median income,
- 4 units have tenants whose income is below 60% of the area median income.

The total development cost of this project is \$700,000. The HOME maximum per unit subsidy is \$50,000. The PJ does not want to displace any current residents, and wants to invest as much HOME funds in this project as possible.

What is the maximum amount of HOME funds the PJ may invest?

The PJ may not invest any HOME funds in the 5 units that are occupied by tenants who are not low-income (whose incomes are above 80% of the area median income). It may invest HOME funds in all of the remaining 15 units. Since 15 HOME-assisted units is 75% of the total units, 75% of the total HOME-eligible development costs (\$525,000) may be paid with HOME funds. The PJ must rent the 10 vacant units to income eligible tenants and at least 3 of the 15 units must be occupied by families below 50% of median income.

C. Option 2: Unit-By-Unit Cost Allocation Method

When the HOME-assisted and non-assisted units in a project are not comparable in terms of distribution or size, the PJ must determine and charge the HOME Program for the actual costs incurred for the acquisition and development of the HOME units, plus any common costs that can be attributed to the HOME portion of the project.

⁴/ In such instances, the PJ may choose to displace the over-income tenants. The displacement would trigger the relocation requirements of §167.92.353.

To allocate these costs, the PJ must designate the HOME-assisted units, develop a proforma for the assisted units, and **track the costs for each unit**. Common costs attributable to HOME-assisted units are determined by calculating the total square feet in HOME units as a percentage of the total square feet in the project. HOME funds can pay for that percentage of the common costs.

The **actual** cost for each unit is charged to the HOME Program, provided the actual cost does not exceed the maximum per unit subsidy. The **actual cost** is charged, regardless of whether it is more or less than the pro-rated cost would be.

A PJ will construct a new 60-unit, mixed-income development. Twenty of the units will be luxury units, with wall-to-wall carpeting, brass fixtures and saunas. The total development costs for these units will be \$2,000,000.

Twenty units will have somewhat fewer amenities and will be marketed to middle income families with incomes between 80 and 120 percent of the area median income. The total development cost of these units will be \$1,500,000.

Twenty units will have even fewer amenities and will be rented to low- and very low-income families. The total development cost of these units will be \$1,000,000.

What is the maximum amount of HOME funds the PJ can invest?

Because the units in this project are not comparable, the PJ may use HOME funds only the cost of the units that will meet the HOME requirements. Therefore, it may invest up to \$1,000,000 in HOME funds to construct the 20 units for income-eligible families, provided that the PJ's per unit subsidy limit equals at least \$50,000. All 20 units will be designated as HOME-assisted.

A PJ will use \$200,000 of HOME funds and \$100,000 of local funds to rehabilitate a 15-unit building it already owns. Ten of the 15 units are 2-bedroom units and will not be HOME-assisted. The remaining 5 units are efficiencies and will be HOME-assisted. The total rehabilitation cost is \$300,000.

What portion of these costs can be paid with HOME funds?

HOME can pay the actual rehabilitation costs, up to the per unit subsidy limit, of the units designated as "HOME-assisted."

D. Special Case: Projects With Owner-Occupied Units

HOME funds may be used to assist projects that contain a single owner-occupied unit and one or more rental units. As with other projects, costs are allocated based upon one of the methods outlined above. However, the PJ and/or the owner also must decide which units will be HOME-assisted and whether the project will be a homeownership project, a rental project or a combination homeownership and rental project. In making this determination, the PJ must consider the activity being undertaken, the number of HOME-assisted units in the project and whether the owner-occupant or homebuyer qualifies as low-income.

If an owner-occupant or homebuyer is receiving HOME assistance to purchase or rehabilitate a building with 2 or more units and in which he or she will reside as a principal residence, the PJ must determine the number of units that must be designated as HOME-assisted based on one of the allocation methods outlined above. Simple prorating may not be appropriate in such cases, because the owner-occupied unit may contain more and/or more expensive amenities than the rental units. Once it has determined the number of units that must be HOME-assisted, the PJ and/or the owner may decide which units are to be so designated. If the owner-occupant or homebuyer is not low-income, then the HOME funds may only be used to assist the rental units in the building.

If the owner-occupant or homebuyer is low-income, the PJ may choose which units to designate as HOME-assisted. For instance, if only one unit must be designated as HOME-assisted, then the HOME unit could be the owner-occupied unit or one of the rental units (as long as the amount of HOME assistance does not exceed the actual cost of rehabilitating the rental unit). If more than one unit must be designated as HOME-assisted, the PJ and/or owner may decide to designate either the owner-occupied unit and one rental unit or two rental units as HOME-assisted. If any rental units are designated as HOME-assisted, then the HOME income targeting and affordability requirements apply throughout the period of affordability.

A PJ is assisting an low-income owner-occupant to rehabilitate her three-unit property. The current tenants in both rental units qualify as low-income. The total rehabilitation cost will be \$45,000. The PJ will provide a \$30,000 loan and the owner will obtain a \$15,000 private rehabilitation loan. The owner's unit is comparable to the rental units in terms of bedroom size, square footage and amenities. Consequently, the HOME costs can be prorated.

Because HOME funds represent two-thirds of the total development cost, two of the units must be HOME-assisted. The PJ may designate either the owner-occupied unit and one rental unit or the two rental units as HOME-assisted.

A PJ wants to increase owner-occupancy in a low-income neighborhood with a large inventory of vacant, 2-to-4 unit properties. Through this program it is assisting a family that does not qualify as low-income to purchase a vacant "triple-decker." The 3 units are comparable in terms of size and amenities. The total acquisition cost for the property is \$120,000. The PJ is providing a deferred \$25,000 HOME loan for downpayment and closing costs. Because the \$25,000 in HOME assistance is less than the average \$40,000 per unit acquisition cost, only one unit is required to be designated as HOME-assisted. Because the family is not income-eligible, one of the two rental units must be designated as HOME-assisted. That unit would be subject to the HOME rent requirements during the period of affordability. Because this is considered a rental project rather than a HOME homebuyer assistance project, the rental requirements are not permitted to lapse if the homebuyer sells the property during the period of affordability.

Section 92.254(a)(5)(ii)(A)(6) of the HOME final rule establishes special rules for cases in which HOME funds are provided to assist a low-income homebuyer to purchase single-family properties containing two to 4 units. The PJ must allocate HOME costs to determine whether HOME funds will assist the homebuyer to acquire more than one unit. If HOME funds are used to assist the acquisition of only one unit and that unit will be the principal residence of the low-income homebuyer, the affordability requirements of _92.254 apply only to that unit. However, if HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units, the rental affordability requirements of _92.252 apply, except that the PJ may impose resale or recapture requirements on all assisted units. If the resale restrictions are used, the affordability requirements on all assisted units continue for the affordability period. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the PJ's discretion, upon recapture of the HOME investment. From a practical standpoint, imposition of the resale restriction on these types of homebuyer properties makes resale very difficult; in these instances, the recapture provisions are usually the better option. If the homebuyer is not low-income or the PJ otherwise decides to assist the acquisition of only the rental units, then the requirements of _92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of _92.254.

A PJ assists a low-income family to purchase a row-house that contains a basement apartment. The total acquisition cost (including closing costs is \$95,000). The PJ is providing a deferred \$15,000 HOME loan for downpayment and closing costs. The basement apartment constitutes only one-third of the total living space and contains fewer amenities.

The unit-by-unit cost allocation determines that the costs attributable to the basement unit equal \$30,000 and that one of the 2 units must be HOME-assisted. Because the HOME subsidy is less than the actual cost of the smaller unit, the PJ may designate either the homebuyer unit or the rental unit as HOME-assisted.

In this instance, the PJ designates the homebuyer's unit as HOME-assisted. The HOME rental requirements will not apply to the basement unit.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

- A. Preamble: As a condition of receipt of federal funds under this Agreement, the State Recipient/CHDO and all of its contractors and their subcontractors are required to provide the certification set forth below; and the State Recipient/CHDO and all of its contractors and their subcontractors are required to include this certification in their contracts.
- B. This certification is required by the Federal government and contains terms defined in Executive Order 12549, a copy of which is available from the State. Generally speaking, for purposes of this Agreement: (1) “prospective lower tier participant” refers to the State Recipient/CHDO and any other party or person that will receive funds flowing from this Agreement, such as general contractors and their subcontractors; (2) “lower tier transaction” refers to contracts let by the State Recipient/CHDO or State Recipient/CHDO’s contractors utilizing funds provided through this Agreement; and (3) “this proposal” refers to the State Recipient/CHDO’s HOME application and any bid or application from a prospective lower tier participant.
- C. By signing this Agreement, the State Recipient/CHDO is providing the certification set forth below. The State Recipient/CHDO shall provide immediate written notice to the State if at any time the State Recipient/CHDO learns that its certification was erroneous when submitted or has become erroneous.
- D. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- E. By signing this Agreement the State Recipient/CHDO agrees that it shall not knowingly enter into any lower tier transaction with a person or entity that is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
- F. By signing this Agreement, the State Recipient/CHDO agrees that it will include the above certification in all lower tier transactions to which it is a part; and it will require that each of its contractors include the certification in their subcontracts.

 Signature

 Title

 Printed Name

 Date

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF COMMUNITY AFFAIRS**

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**CDBG/HOME**

**Community Development Block Grant Program
HOME Investment Partnerships Program**

MANAGEMENT MEMORANDUM

Memorandum Number 02-07

**TO: All CDBG Eligible Jurisdictions and CDBG Interested Parties;
All HOME Eligible Jurisdictions, State Certified CHDOs and
HOME Interested Parties.**

DATE: April 3, 2002

SUBJECT: Senate Bill SB 975 - Milestones

Senate Bill 975 (Chapter 938) which became effective on January 1, 2002 is impacting the administration and implementation of the Department's Community Development Block Grant program (CDBG) and the HOME Investment Partnerships Program (HOME). The legislation invokes state prevailing wage requirements on CDBG and HOME housing programs and projects.

In light of the effect of the new state prevailing wage laws, the CDBG program will be showing forbearance when scoring performance in the upcoming 2002/03 General/Native American funding round. Applicants that were in compliance with expenditure milestones as of December 31, 2001, will not lose points in the rating and ranking process.

Similarly, the HOME Program will also show forbearance to contractors with open HOME contracts that were in compliance as of December 31, 2001. HOME contractors that miss program expenditure milestones during the first six months of 2002 will not lose performance points the next time they apply for HOME funding. Bear in mind, however, that the HOME Program will not extend any final expenditure milestone nor permit funds to be expended after any final expenditure milestone.

However, CDBG and HOME grantees and contractors must continue operating their programs or projects under the current requirements of SB 975. CDBG and HOME grantees and contractors must not delay requesting wage determinations from the Department of Industrial Relations in anticipation of legislation that has not yet passed by the Legislature and signed into law by the Governor.

If you have questions about using either your CDBG or HOME funds for housing projects that might require the payment of state prevailing wages, please contact your CDBG or HOME representative. If you have questions about the new law, please contact the State Department of Industrial Relations for further guidance.